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Schulte Roth & Zabel LLP  
919 Third Avenue  
New York NY 10022

In re Application of  
Masayuki Takayama, et al.  
Application No. 09/621,045  
Filed: July 21, 2000  
For: **MOBILE TELEPHONE SET**

DECISION ON PETITION  
TO WITHDRAW HOLDING OF  
ABANDONMENT

This is a decision on the Petition to Withdraw Holding of Abandonment pursuant to MPEP §711.03(c) and 37 CFR §1.181(a), filed February 17, 2005. No fee is required.

This application was held abandoned for failure to timely submit the issue fee due in response to the Notice of Allowance mailed October 24, 2003. A Notice of Abandonment was mailed January 13, 2005.

Petitioner states that the Notice of Allowance was not received. The petition was accompanied by a declaration from a John C. Garces and Wendy Nelson, and also a copy of a docket record.

Pursuant to MPEP § 711.03(c) [*See also Notice entitled Withdrawing the Holding of Abandonment When Office Actions Are Not received, 1156 O.G. 53 (November 16, 1993)*], in absence of any irregularity in the mailing of an Office Action, there is a strong presumption that the Office action was properly mailed to practitioner at the address of record. This presumption may be overcome by a showing that the Office action was not in fact received. The showing required to establish the failure to receive an Office communication must include a statement from the practitioner stating:

- (a) that the Office communication was not received by the practitioner; and
- (b) personally attesting to a search of the file jacket and docket records indicates that the Office communication was not received;

In addition, the petition must include a copy of the docket record where the non-received Office communication would have been entered had it been received and docketed must be attached to and referenced in practitioner's statement.

The showing outlined above may not be sufficient if there are circumstances that point to a conclusion that the Office communication may have been lost after receipt rather than a conclusion that the Office communication was lost in the mail.

The declarations of Mr. Garces and Ms. Nelson state "We are providing this declaration to affirm that a search of the file jacket and docket record in connection with the above-identified patent application were performed". Given that the co-signed declaration does not provide clear indication as to the person attesting to the search of the file jacket (required of the practitioner), the petition does not comply with the requirements of a successful petition to withdraw the holding of abandonment due to the lack of a statement from the Practitioner attesting to a personal search of the file jacket and docket records and indicating that the office communication

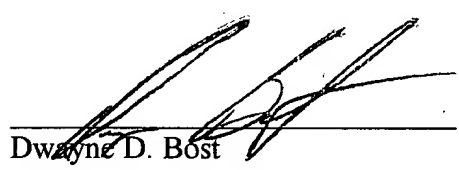
was not received.

Moreover, there is no evidence of record that John C. Garces and Wendy Nelson (Petitioners) were ever granted power of attorney in the application. Therefore, Petitioners are not the practitioner of record in which to make the requisite statement.

Accordingly, the petition is **DENIED**.

Any request for reconsideration must be filed within **TWO MONTHS** of the date of this decision, be executed by a practitioner of record and include the information as outlined above. Alternatively, practitioner may file a petition to revive under 37 CFR §1.137.

The application is being forwarded to the Technology Center's file repository.



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